

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 12, 2004

IN RE:)	
)	
PETITION OF CHATTANOOGA GAS COMPANY)	DOCKET NO.
FOR APPROVAL OF ADJUSTMENT OF ITS)	04-00034
RATES AND CHARGES AND REVISED TARIFF)	

**ORDER REFLECTING STATUS OF ACTION,
DENYING CONSUMER ADVOCATE'S MOTION TO EXTEND TIME AND
ESTABLISHING PROCEDURAL SCHEDULE TO COMPLETION**

This matter is before the Tennessee Regulatory Authority ("Authority") upon the *Petition of Chattanooga Gas Company for Approval of Adjustment of its Rates and Charges and Revised Tariff* ("Petition") filed on January 26, 2004. At a regularly scheduled Authority Conference held on February 9, 2004, the voting panel assigned to this matter; Chairman Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle, appointed General Counsel or his designee to act as Hearing Officer for the purpose of preparing this matter for hearing, including hearing preliminary matters prior to the hearing and establishing a procedural schedule to completion. The panel also voted to suspend the Company's tariff through May 29, 2004. On February 27, 2004 Chattanooga Gas Company ("Chattanooga Gas" or the "Company") filed revisions to its tariff sheets.

On February 26, 2004, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a Petition to Intervene in this docket questioning the reasonability of the requested rate increases and asserting that approval of the

petition, as presently filed, is not in the public interest. On March 2, 2004, the Chattanooga Manufacturers Association ("CMA"), a trade association representing over 250 manufacturers and other businesses, filed a Petition to Intervene stating that the proposed increases to certain rates and charges sought by Chattanooga would adversely affect rate payers, including members of the CMA.

On April 13, 2004, the Hearing Officer issued a Notice setting a Status Conference to be held on April 19, 2004. On April 16, 2004, Gas Technology Institute ("GTI") filed a Petition to Intervene. GTI alleged as a basis for intervention that a charge, approved by the Federal Energy Regulatory Commission ("FERC") and currently being recovered from rate payers for research and development, would be discontinued by the end of 2004. According to GTI, FERC has transferred to state commissions the authority for funding research and development and GTI seeks intervention in this proceeding for the purpose of including the charges for research and development in the Company's requested rate increase.

APRIL 19, 2004 STATUS CONFERENCE

Parties in Attendance

Pursuant to the Notice, a Status Conference was held on April 19, 2004 for the purpose of acting on pending petitions for intervention, developing a list of issues to be addressed in this proceeding and establishing a procedural schedule to completion.

In attendance at the Status Conference on April 19, 2004 were the following parties:

Chattanooga Gas Company – **D. Billye Sanders, Esq.**, Waller, Lansden, Dortch & Davis, Nashville City Center, 511 Union Street, Suite 2100, Nashville, TN 37219-8966; **Archie Hickerson**, Manager-Rates, Atlanta Gas and Light Resources also participated during the status conference.

Consumer Advocate and Protection Division - **Timothy Phillips, Esq.** and **Vance Broemel, Esq.**, Office of the Attorney General, 426 5th Ave. N, 2nd Floor, John Sevier Building, Nashville, TN 37243;

Chattanooga Manufacturers Association (CMA) – **Henry Walker, Esq.** Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P. O. Box 198062, Nashville, TN 37219-8062; and **David C. Higney, Esq.**, Grant, Konvalinka & Harrison, P.C., 633 Crestnut Street, 9th Floor, Chattanooga, TN 37450-0900. Mr. Higney participated by way of telephone.

Gas Technology, Institute (GTI) – **R. Dale Grimes, Esq.**, Bass, Berry & Sims, PLC, 315 Deaderick Street, Suite 2700, Nashville, TN 37238-0002.

Petitions to Intervene

At the outset of the Status Conference the Hearing Officer considered the pending Petitions to Intervene filed by the Consumer Advocate, CMA and GTI. Counsel for the Company stated that the Company did not oppose the petitions for intervention. None of the counsel present expressed opposition to the petitions.

The Hearing Officer found that Petitions to Intervene filed by the Consumer Advocate, CMA and GTI met the criteria for granting petitions to intervene set forth in Tenn. Code Ann. § 4-5-310(a). The Petitions to Intervene were timely filed and served, and substantiated that the legal interests of the intervenors may be determined in this matter. The petitioners demonstrated that the interests of justice and the orderly and prompt conduct of this matter would not be impaired by allowing the interventions. In the absence of any opposition to the petitions and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the Petitions to Intervene filed by the Consumer Advocate, CMA and GTI.

GTI's Participation in this Docket

During the Status Conference, questions were raised regarding the relief being sought by GTI in this docket and whether GTI's request should be considered in a separate docket or a bifurcated proceeding. To assist in the determination of this issue, counsel for GTI was directed to file a letter, not later than Thursday, April 22, 2004, detailing the current amount of

the charge for research and development being assessed by gas companies and whether GTI is seeking an assessment as a part of the basic rate increase or a part of a purchase gas adjustment charge.

In addition, the parties agreed that the question regarding the manner in which GTI's request should be considered could be raised and decided through a Motion to Sever that request from this proceeding. Counsel for CMA agreed to file such a motion on Friday, April 23, 2004 with response(s) to the motion due by April 30, 2004.

Procedural Matters

The Hearing Officer suggested a limited schedule aimed at a tentative hearing date in June. Discussions with the parties regarding a potential hearing however did not yield an agreed upon date. Therefore, the Hearing Officer, in cooperation with the parties, established a preliminary procedural schedule to commence discovery. The schedule incorporated dates for serving discovery requests and filing discovery responses and objections. Another Status Conference was scheduled for May 10, 2004 to address any discovery objections and motions to compel.

The Hearing Officer also inquired of the parties during the Status Conference on April 19, 2004, whether any party had an objection to Hal Novak, presently Chief of the TRA Energy and Water Division and formerly an employee of Atlanta Gas and Light, the parent corporation of Chattanooga Gas Company, serving in an advisory capacity in this matter. The Hearing Officer asked for any responses or comments to be filed no later than April 26, 2004.¹

¹ The Consumer Advocate filed the only response to the Hearing Officer's inquiry and stated that it did not oppose Mr Novak acting in an advisory role in this proceeding

MAY 10, 2004 STATUS CONFERENCE

A Status Conference was held on May 10, 2004 at which time the Hearing Officer considered motions to compel discovery filed by Chattanooga and the Consumer Advocate. While reviewing the motions in detail the Hearing Officer issued rulings on specific objections to discovery from the Company to the Consumer Advocate and CMA, and from the Consumer Advocate to the Company. A separate order has been issued reflecting the rulings of the Hearing Officer on the discovery motions.

CONSUMER ADVOCATE'S MOTION TO EXTEND HEARING TIME TO NINE MONTHS

On May 13, 2004, the Consumer Advocate filed a *Motion to Extend the Hearing Time to Nine Months* ("Motion"). Chattanooga Gas filed a Response on May 21, 2004. In its *Motion*, the Consumer Advocate states the following:

Currently, it appears that the TRA is attempting to hold a hearing and issue a final order in the Chattanooga Gas Company rate case within six months of the filing of the Chattanooga Gas Company's petition for a rate increase, filed January 26, 2004. Tennessee law, however, permits the TRA to take up to nine months to issue a final order so long as the company is allowed the option of putting the proposed rate increase into effect under a bond to cover any refund. See Tenn. Code Ann. § 65-5-203. In the present case, it is now clear that attempting to hold the hearing within six months of January 26, 2004 jeopardizes the Consumer Advocate's right to a full and fair hearing because as of this time the Consumer Advocate has been unable to obtain the necessary factual information to which it is entitled.²

In its Response, Chattanooga stated, "Rather than debating and adjudicating issues related to delay and incurring these additional expenses, CGC reiterates its position that the parties and the Agency should devote their efforts to moving forward with the proceedings."³

² *Consumer Advocate's Motion to Extend the Hearing Time to Nine Months*, p 1 (May 13, 2004)

³ *Response of Chattanooga Gas Company to Consumer Advocate and Protection Division's Motion to Extend the Hearing Time to Nine Months*, p 3 (May 21, 2004).

The Consumer Advocate's *Motion* is not a proper motion. As recognized by the Consumer Advocate, Tenn. Code Ann. § 65-5-203 provides two time periods as benchmarks for the completion of an investigation and issuance of a final order by the TRA. Section 65-5-203(a) authorizes the TRA to suspend an increase requested by a public utility where the TRA conducts its investigation. That section establishes a nine month deadline for a decision on any increase, change or alteration.

The second time period, described in Tenn. Code Ann. § 65-5-203(b)(1), is that of "six (6) months from date filed of any such increase, change or alteration..." That section provides that the utility may place in effect "the proposed increase, change or alteration" if the TRA has not concluded its investigation and issued a final order at the end of that six month period. There is nothing in subsection (b)(1) that limits or restricts the TRA's ability to continue its investigation beyond six months from the filing date.

Tenn. Code Ann. § 65-5-203(b) merely permits the utility to place the increased rates in effect after the six month period upon meeting two conditions. First, the utility must notify the Authority, in writing, that it intends to place the increase into effect. Second, if required by the TRA, the utility must file with the TRA "a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority..."

With or without the utility exercising its conditioned option to place a proposed increase into effect, the TRA has nine months from the date of filing of the increase, change or modification to complete its investigation of the matter. Therefore, in essence, the Consumer Advocate's motion seeks an "extension" of a time period already provided for in the statute. By fully acknowledging that Chattanooga Gas Company has the option to put the

increase into effect after six months of the date this increase is filed, the Consumer Advocate is merely asking the TRA to comply with Tenn. Code Ann. § 65-5-203.

The thrust of the Consumer Advocate's *Motion* asks the TRA to not act on the petition within six months from the filing of Chattanooga Gas Company's initial petition. Nevertheless, granting this request does not amount to a grant of an extension of time. In this respect, the Consumer Advocate is actually asking that the Hearing date for the petition not be set within six months of January 26, 2004.

Notwithstanding a denial of the Consumer Advocate's *Motion*, upon a review of the record to date, the Hearing Officer finds that Chattanooga Gas Company's assertions in its Response are not entirely accurate. The Company equates the six month period for placing "rates" into effect with six months from the filing of the *Petition*. Chattanooga Gas Company has made a unilateral determination that the six month period expires on July 26, 2004. The Hearing Officer cannot reach a similar conclusion.

While the Company is free to assert that the TRA's Minimum Filing Requirements for filing a rate case petition are not, in fact, mandatory requirements, Chattanooga Gas may not stretch its filings out over a period of time after January 26, 2004, and reasonably expect all such filings to come under the purview of a January 26, 2004 filing date. In fact, Chattanooga Gas Company has made filings that bear significantly on its request for an increase several weeks after the filing of the *Petition*.

Most importantly, on February 27, 2004, Chattanooga Gas Company filed an increase in rates which appears to be applicable at least to industrial customers. This specific increase was not a part of the Company's January 26, 2004 filing. Under the language of Tenn. Code Ann. § 65-5-203, as understood by both the Consumer Advocate and Chattanooga Gas

Company, the nine month period for an investigation of this proposed increase would commence on February 27, 2004, and the six month period after which Chattanooga Gas Company could put such rates into effect would not expire until after August 27, 2004.

The Hearing Officer would not propose that investigations, hearings and deliberations on these separate rate increases be conducted at different times on different schedules. Rather, the Hearing Officer concludes that the increases sought by Chattanooga Gas Company, though filed separately and at different times, be reviewed and determined by the TRA through a single investigation and hearing. Nevertheless, the Hearing Officer finds and concludes that any rate "increase, change or alteration" may not be placed into effect until the expiration of six months following the date on which that increase, change or alteration was filed with the TRA.

PROCEDURAL SCHEDULES AND HEARING DATE

After much discussion during the Status Conferences and afterward, no agreement has been reached regarding a procedural schedule for the filing of additional discovery or pre-filed testimony. No stipulations have been entered by the parties regarding substantive issues in this matter. The Hearing Officer recognizes that parties are entitled to engage in rigorous discovery and raise reasonably sustainable objections. Nevertheless, no party should benefit in this process through unnecessary delay or unfair expedited treatment.

In the absence of an agreed schedule, the Hearing Officer establishes the following procedural schedule which is based on a Hearing commencing on August 23, 2004.

**Hearing Officer's Orders
Granting Additional Discovery**

July 12, 2004

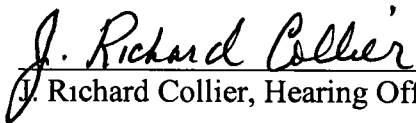
**Chattanooga's Responses to Additional
Discovery Requests**

July 19, 2004

Status Conference	July 23, 2004 at 2:00 p.m.
Intervenors' Testimony Due	July 26, 2004
Chattanooga's Supplemental Discovery Requests	August 2, 2004
Intervenors' Responses to Chattanooga's Supplemental Discovery Requests	August 9, 2004
Chattanooga's Rebuttal Testimony	August 16, 2004
Pre-Hearing Conference	August 18, 2004
Hearing	August 23-27, 2004

IT IS THEREFORE ORDERED THAT

1. The Consumer Advocate's *Motion to Extend the Hearing Time to Nine Months* is denied.
2. The Procedural Schedule and Hearing date set forth herein is hereby in place.


J. Richard Collier, Hearing Officer